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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 NOV -3 A 9:45

Arizona Corporation Commission

DOCKETED

NOV -3 2009

DOCKETED BY

MM

IN THE MATTER OF THE PETITION OF
GARKANE ENERGY COOPERATIVE, INC.
FOR A DECLARATORY ORDER.

DOCKET NO. E-01891A-09-0377

PROCEDURAL ORDER

BY THE COMMISSION:

On July 30, 2009, Garkane Energy Cooperative, Inc. ("Garkane") filed with the Arizona Corporation Commission ("Commission") a Petition for Declaratory Order ("Petition"). In its Petition, Garkane requests that the Commission issue a declaratory order confirming that Garkane is not required to obtain Commission approval of financings under A.R.S. §§ 40-301 et seq. or encumbrances under A.R.S. § 40-285 because Garkane is a foreign public service corporation engaged in interstate commerce. In the alternative, Garkane requests retroactive Commission approval of a November 1999 mortgage and security agreement, a December 2003 loan agreement, an October 2007 loan agreement, an April 2009 substitute secured promissory note, and a May 2009 revolving line of credit. Garkane was required to file its Petition, by Decision No. 70979 (May 5, 2009), and indicated in that matter that it was amenable to doing so.

On September 16, 2009, a Procedural Order was issued scheduling a procedural conference in this matter to be held on September 30, 2009, to discuss the procedures and scheduling for this matter.

On September 30, 2009, a procedural conference was held in this matter. Garkane and the Commission's Utilities Division ("Staff") appeared through counsel. At the procedural conference, Garkane and Staff both stated that they believe no hearing is necessary to resolve the legal issues raised by Garkane's Petition. Staff suggested that the legal issues raised be resolved through a Recommended Order from the Hearing Division and that additional proceedings be held regarding

1 the analysis and approval of Garkane's financings only if it is first determined that Garkane is legally
2 required to obtain Commission approval of its financings. Counsel for Garkane agreed with Staff's
3 suggested approach. The parties also agreed that no public notice is necessary at this time, but that
4 the issue of public notice should be revisited in the event additional proceedings are scheduled
5 regarding the analysis and approval of Garkane's past financings. The parties suggested that Staff be
6 provided approximately one month to file a Response to Garkane's Memorandum of Points and
7 Authorities and that Garkane then be provided two to three weeks to file a Reply to Staff's Response.

8 On October 1, 2009, a Procedural Order was issued adopting the parties' suggested schedule,
9 resulting in a deadline of November 2, 2009, for Staff's Response to Garkane's Petition, and a
10 deadline of November 23, 2009, for Garkane's Reply thereto.

11 On November 2, 2009, Staff filed a request for modification of the procedural schedule,
12 stating that the requested modification is supported by Garkane and would not result in prejudice to
13 any party. Staff requested that its deadline be changed to November 23, 2009, and that Garkane's
14 deadline be changed to December 11, 2009.

15 Because the parties are in agreement concerning modification of the filing deadlines in this
16 matter, and there is no reason to believe that any person would be prejudiced as a result of the
17 requested schedule modification, it is appropriate to grant Staff's request, modified slightly to allow
18 Garkane a full three weeks after Staff's Response to file its Reply thereto.

19 IT IS THEREFORE ORDERED that **Staff shall, by November 23, 2009**, file a Response to
20 Garkane's Petition, in which Staff shall specifically respond to the Memorandum of Points and
21 Authorities included therewith.

22 IT IS FURTHER ORDERED that **Garkane shall, by December 14, 2009**, file a Reply to
23 Staff's Response.

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1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
2 Communications) applies to this proceeding and shall remain in effect until the Commission's
3 Decision in this matter is final and non-appealable.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

6 DATED this 3rd day of November, 2009.

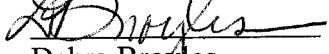
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8
9 
10 SARAH N. HARPRING
11 ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 3rd day of November, 2009, to:

14 Michael M. Grant
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25 By: 
26 Debra Broyles
27 Secretary to Sarah N. Harpring
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